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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/246,612	02/08/1999	JAMES MCCORMICK	1400.9801020	6382
25697 7590 12/31/2007 ROSS D. SNYDER & ASSOCIATES, INC. PO BOX 164075 AUSTIN, TX 78716-4075			EXAMINER TANG, KENNETH	
			ART UNIT 2195	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/246,612

Applicant(s)

MCCORMICK ET AL.

Examiner

Kenneth Tang

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 9, 10, 14-18, 22-26, 28, 31-35, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) 4, 6, 8, 11-13, 19-21, 27, 29-30, and 36-38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the Response filed on 10/5/07. Applicant's arguments have been fully considered but were not found to be persuasive.
2. Claims 1-40 are presented for examination.

Allowable Subject Matter

3. Claims 4, 6, 8, 11-13, 19-21, 27, 29-30, and 36-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-3, 5, 7, 9-10, 14-18, 22-26, 28, 31-35, and 39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Willmann et al. (hereinafter Willmann) (US 5,521,923).**

5. As to claim 1, Willmann discloses a method consisting of the following:
receiving a plurality of call signaling messages (D1, D2, D3, Fig. 1);

comparing a queue occupancy level (col. 5, lines 32-33) of a call processing queue with a first queue occupancy threshold (col. 6, line 8, CMP2, Fig. 2); and

when occupancy level compares unfavorably with the first queue occupancy threshold, enqueueing the plurality of call signaling messages into the call processing queue based on types (priority classes, P1, P2) of call signaling messages (col. 6, lines 3-7 and 24-31).

6. Specifically, when the queue occupancy level compares unfavorably with the threshold, the system stores new lower priority P2 data, deletes old lower priority P2 data, and always stores new higher priority P1 data.

7. As to claim 2, Willmann teaches using dispensable (lower priority class) and indispensable (higher priority class) as type of call signaling messages (col. 6, lines 3-7 and 24-31).

8. As to claims 3, Willmann teaches the following:

- a) when message is dispensable, delete the previous dispensable message (col. 6, lines 3-7 and 24-31);
- b) enqueueing new message when previous one is deleted (col. 6, lines 3-7 and 24-31);
- c) enqueueing message into queue when message is indispensable (col. 6, lines 3-7 and 24-31).

9. As to claim 5, Willmann discloses a method consisting of the following:

comparing the queue occupancy level with a second queue occupancy threshold (CMP1, CMP2, Fig. 2);

when occupancy level compares unfavorably with the second queue occupancy threshold:

when a call signaling message of the plurality of call signaling messages is a dispensable message, deleting from the call processing queue a previously queued dispensable message when the previously dispensable message exists (col. 6, lines 3-7 and 24-31);

enqueueing the call signaling message into the call processing queue when the previously queued dispensable message is deleted (col. 6, lines 3-7 and 24-31).

10. As to claim 7, it is rejected for the same reasons as stated in the rejection of claim 3.

11. As to claims 9, Willmann teaches when in a sustained overloading condition, dequeuing dispensable call signaling messages in a first dequeuing manner from the call processing queue (col. 6, lines 3-7 and 24-31). Being in a sustained overloading condition is merely staying within the maximum queue occupancy threshold.

12. As to claim 10, Willmann teaches using at least one of FIFO and LIFO (col. 4, line 19).

13. As to claim 14, it is rejected for the same reasons as stated in the rejection of claim 1.

14. As to claim 15, it is rejected for the same reasons as stated in the rejection of claim 2.

15. As to claim 16, it is rejected for the same reasons as stated in the rejection of claim 3.
16. As to claim 17, it is rejected for the same reasons as stated in the rejection of claim 5.
17. As to claim 18, it is rejected for the same reasons as stated in the rejection of claim 4.
18. As to claim 22, it is rejected for the same reasons as stated in the rejection of claim 1.
19. As to claim 23, it is rejected for the same reasons as stated in the rejection of claim 2.
20. As to claim 24, it is rejected for the same reasons as stated in the rejection of claim 3.
21. As to claim 25, it is rejected for the same reasons as stated in the rejection of claim 1.
22. As to claim 26, it is rejected for the same reasons as stated in the rejection of claim 18.
23. As to claim 28, it is rejected for the same reasons as stated in the rejection of claim 9.
24. As to claim 31, it is rejected for the same reasons as stated in the rejection of claims 9 and
- 10.

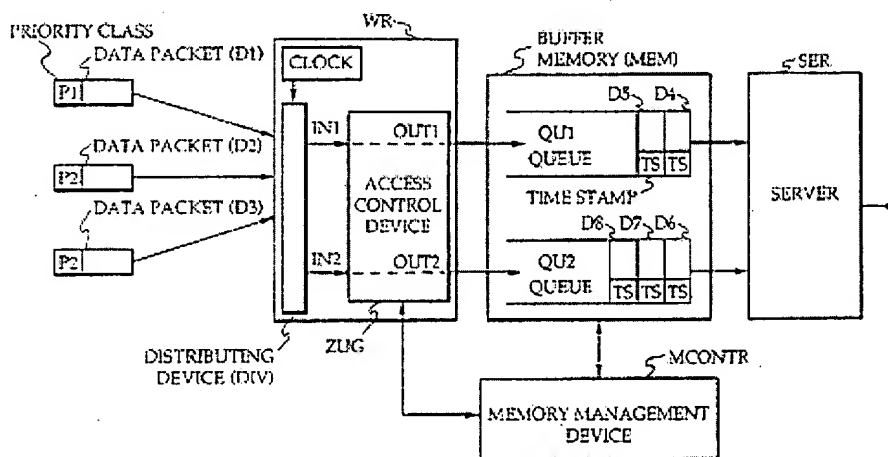
25. As to claim 32, it is rejected for the same reasons as stated in the rejection of claim 1.
26. As to claim 33, it is rejected for the same reasons as stated in the rejection of claim 2.
27. As to claim 34, it is rejected for the same reasons as stated in the rejection of claim 3.
28. As to claim 35, it is rejected for the same reasons as stated in the rejection of claim 5.
29. As to claim 39, it is rejected for the same reasons as stated in the rejection of claims 9 and 10.
30. As to claim 40, Willmann teaches using at least one of FIFO and LIFO (col. 4, line 19).

Response to Arguments

31. Regarding claims 1, 14, 22, 25 and 32, Applicant argues that elements D1, D2, and D3 are described as "DATA PACKET" in Fig. 1, and states without any rationale that they are not the claimed "call signaling messages". Applicant also argues that cited portions of col. 6, lines 3-7 and 24-31 and col. 5, lines 32-33 appear to teach away from "when queue occupancy level compares unfavorably with the first queue occupancy threshold, enqueueing the plurality of call signaling messages into the call processing queue based on types of call signaling messages," as the "method and facility" would apparently be unable to perform "enqueueing the plurality of call

signaling messages into the call processing queue based on types of call signaling messages” when “n” compares unfavorably to “N”.

32. In response, a data packet is used to communicate a data message (elements D1, D2, and D3) sent over a communications network to a distributed device (col. 1, lines 21-23 and col. 3, lines 65-66).



33. Applicant does not provide any explanation or rationale why a data packet would not be equivalent to a call signaling message. Furthermore, Applicant's Specification discloses that call signaling messages "may be call set-up messages, connect messages, call proceeding messages, call release messages, release complete messages, link layer information, etc." (bold and underlined for emphasis) (see page 6, lines 6-8 of the Applicant's Specification). This does not provide a definitive definition of what a call signaling message is, but rather examples of what a call signaling message could possibly be. The Examiner's interpretation that a call signaling message is merely a message used to communicate over a communications network satisfies the broadest reasonable interpretation of a call signaling message. Again, Willmann teaches a data packet is used to communicate a data message (elements D1, D2, and D3) sent over a

communications network to a distributed device (col. 1, lines 21-23 and col. 3, lines 65-66).

Therefore, Willmann teaches the claimed limitation of a call signaling message, given the broadest reasonable interpretation. During patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). In col. 6, lines 24-31, it describes comparing a queue occupancy level with a threshold in that it determines if a queue length has reached the limit of capacity (threshold). If it is less than the capacity (threshold), then it compares unfavorably and has room for more messages, and therefore, messages are inserted into the queue (col. 5, lines 45-50). If it reaches capacity (threshold), then it compares favorably and has no room for messages, and therefore, messages are deleted from the queue so that a higher priority message could then replace (through enqueueing) a lower priority message (col. 6, lines 24-31). Therefore, the Willmann reference does not teach away from the claimed limitations.

34.

35. Applicant does not argue the limitations of claims 2, 15, 23, and 33.

36. Regarding claims 3, 16, 23, and 34, Applicant argues that col. 6, lines 3-7 and 24-31 appear to teach away from “dispensable” relating to a lower priority class. In addition, Applicant

argues that the cited reference fails to disclose “when the call signaling message is an indispensable message, enqueueing the call signaling message into the call processing queue.

37. In response, Willmann does not teach away from the claimed limitations. An indispensable message is merely one that would be considered an essential message or high priority message, for example. And likewise, a dispensable message is merely one that would be considered non-essential. In col. 6, lines 24-31, Willmann teaches if the queue occupancy level reaches capacity, it deletes from the queue so that a higher priority message could replace (through enqueueing) the deleted lower priority (dispensable) message. Therefore, the Willmann reference does not teach away from the claimed limitations.

38. Regarding the arguments for claims 4, 6, 8, 11, 13, 19, 21, 27, 29, and 36-37, it was found to be persuasive. Rejections to those claims have been withdrawn.

39. Regarding claims 5, 17, and 35, Applicant argues that the cited portions teach away from the limitations. As one example, Applicant notes col. 6, line 30 and 31, which state, “...the vacated location will be used for storing a data packet of the high priority class P1.”

40. In response, Applicant makes the same argument as in claims 1 and 3. The second queue is treated in the same way as the first queue. Again, an indispensable message is merely one that would be considered an essential message or high priority message, for example. And likewise, a dispensable message is merely one that would be considered non-essential. In col. 6, lines 24-31, Willmann teaches if the queue occupancy level reaches capacity, it deletes from the queue so that a higher priority message could replace (through enqueueing) the deleted lower priority

(dispensable) message. Therefore, the Willmann reference does not teach away from the claimed limitations.

41. Regarding claim 7, Applicant argues that the cited portions of the reference teach away from the limitations. For example, Applicant notes col. 6, lines 28 and 29, states, "...and data packets are still stored in the queue QU2 of the lower priority class P2...".

42. In response, claim 7 is similar to claim 3. Willmann does not teach away from the claimed limitations. An indispensable message is merely one that would be considered an essential message or high priority message, for example. And likewise, a dispensable message is merely one that would be considered non-essential. In col. 6, lines 24-31, Willmann teaches if the queue occupancy level reaches capacity, it deletes from the queue so that a higher priority message could replace (through enqueueing) the deleted lower priority (dispensable) message. Therefore, the Willmann reference does not teach away from the claimed limitations.

43. Regarding claims 9, 28, 31, and 39, Applicant argues that the cited portions of col. 6, lines 3-7 and 24-31 appear to teach away from the proposition the Examiner appears to assert regarding the limitation of "when in a sustained overloading condition, dequeuing dispensable call signaling messages in a first dequeuing manner from the call processing queue."

44. In response, In col. 6, lines 24-31, Willmann teaches if the queue occupancy level reaches capacity, it deletes from the queue so that a higher priority message could replace (through enqueueing) the deleted lower priority (dispensable) message. Therefore, the Willmann reference does not teach away from the claimed limitations.

45. Applicant does not argue the limitations of claims 10 and 40.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Kt
12/23/07


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